

**BOISE, MONDAY, MAY 15, 2023, AT 8:50 A.M.**

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

<b>SHAKE OUT, LLC, an Idaho limited liability</b>	)	
<b>company,</b>	)	<b>Docket No. 49637</b>
	)	
<b>Plaintiff-Appellant,</b>	)	
	)	
<b>v.</b>	)	
	)	
<b>CLEARWATER CONSTRUCTION, LLC, an</b>	)	
<b>Idaho limited liability company,</b>	)	
	)	
<b>Defendant-Respondent,</b>	)	
	)	
<b>and</b>	)	
	)	
<b>JOHN DOES 1-10, and CORPORATIONS</b>	)	
<b>XYZ,</b>	)	
	)	
<b>Defendants.</b>	)	

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Appeal from the District Court of the Fifth Judicial District, State of Idaho, Twin Falls County. Roger B. Harris, District Judge.

RandsLaw, PLLC, Twin Falls, for appellant, Shake Out LLC.

Peterson Law Office, PLLC, Twin Falls, for respondent, Clearwater Construction, LLC.

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This appeal concerns the applicability and enforceability of an arbitration clause. Shake Out, LLC, (“Shake Out”) entered into a contract with Clearwater Construction, LLC, (“Clearwater”), to repair the building containing Shake Out’s restaurant. The relationship between the parties quickly deteriorated. Shake Out filed suit against Clearwater in district court, asserting four causes of action: (1) violations of the Idaho Consumer Protection Act; (2) fraud; (3) breach of contract and the covenant of good faith and fair dealing; and (4) negligence. The parties attempted to mediate their dispute but were unable to do so successfully.

After the case had proceeded for some time, Clearwater sought to compel arbitration pursuant to the contract. Shake Out objected, asserting that Clearwater had waived its right to enforce the arbitration clause because it had participated in the litigation for almost ten months without seeking to compel arbitration. The district court concluded Clearwater had not waived its

right to seek arbitration and entered an order compelling arbitration and staying the proceedings. Shake Out timely appealed.